

### **REMARKS**

Claims 1-15 and 32 are pending in the application. Claim 32 has been amended. Reconsideration of the previously rejected claims and favorable action is requested in light of the above amendments and the following remarks.

The Office Action rejects claims 1-15 and 32 under 35 U.S.C. § 112 as failing to comply with the written description requirement and as indefinite. The Office Action also rejects claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,692,497 to Schnitzer et al. (hereafter "Schnitzer") in view of U.S. Patent No. 5,046,491 to Derrick et al. (hereafter "Derrick"), and further in view of U.S. Patent No. 6,142,950 to Allen et al. (hereafter "Allen"). Insofar as these grounds for rejection apply to the present claims, Applicant respectfully traverses.

#### **Written Description Requirement**

The Office Action rejects claims 1-15 and 32 under 35 U.S.C. § 112 as failing to comply with the written description requirement and as indefinite. Support for previous amendments can be found in the Specification at least in the Abstract and at paragraphs [0010], [0036], [0042], [0043], and [0044]. Claim 32 has been amended to remove "and/or."

#### **Schnitzer in view of Derrick further in view of Allen**

The Office Action rejects claim 1 as obvious over Schnitzer in view of Derrick and Allen.

As described in the Abstract, Schnitzer relates to a microprocessor-controlled ventilator that controls a patient's breathing selectively. The microprocessor connects to a pneumatic subsystem which includes a variety of sensors and actuators and the catheter disposed in the patient's trachea. A feedback control loop provides a basis for controlling selected actuators within the subsystem to control the patient's breathing.

Derrick, as described in the Abstract, relates to an apparatus and method for selective, separate or simultaneous collection and analysis of nasal gases and oral gases, and mixtures thereof, respired by a patient, with optional simultaneous delivery to the patient of selected inhalant gases. The apparatus comprises a nasal gas cannula and an oral gas capture member constructed and arranged to avoid or minimize contact with the patient's mouth and other facial surfaces.

Allen, as described in the Abstract, relates to a method and device for evaluating a fully ambulatory subject for sleep apnea by sampling the subject's breathing through the use of an airflow sensor on the subject's upper lip.

To establish a prima facie case of obviousness, three criteria must be met. First, there must be some reason to modify the reference or to combine the reference teachings. Second, there must be some expectation of success. Third, the prior art references must disclose or suggest all of the claimed features. See MPEP 2143 and the May 3, 2007 letter from the PTO Deputy Commissioner for Patent Operations regarding *KSR Int'l Co. v. Teleflex, Inc.* Applicant respectfully continues to submit that these criteria have not been met for Schnitzer in view of Derrick and Allen as applied to claims 1-15 and 32 of the present invention.

For example, claim 1 of the present invention recites, in part, "A respiratory monitoring system comprising: a patient interface comprising a nasal cannula and a visual display...; a respiratory monitor...; and an electronic controller...; wherein said visual display alerts the user of a potential problem and said electronic controller *automatically gathers information regarding an additional aspect of the respiratory condition of the patient* when said visual display alerts the user." Schnitzer fails to disclose an electronic controller that automatically gathers information regarding an additional aspect of the respiratory condition of the patient when the system alerts the user of a potential problem. Schnitzer discloses "continuous capture of patient data for 'real-time' read out or storage for future...use" and warning buzzers, alarms or lights, but Schnitzer does not teach or suggest an electronic controller that gathers information regarding an additional aspect of the respiratory condition, as in claim 1. The monitoring of Schnitzer may disclose continuing to gather the same type of information that was gathered prior to an alarm situation, but Schnitzer does not disclose also gathering new types of information when alerting the user.

The Office Action points to Schnitzer's disclosure of calculating  $V_D/V_T$ ,  $CO_2$  production, or  $O_2$  consumption. However, this calculation is not information *gathering*, but rather manipulation of/calculations based on previously gathered data (or in real-time, currently gathered data regarding the same aspect of the respiratory condition). Further, the CPU of Schnitzer is not *automatically* gathering this information; these calculations are "operator-specific." Schnitzer does not teach or suggest an electronic controller that *automatically gathers information regarding an additional aspect of the respiratory condition of the patient* when said visual display alerts the user.

Derrick fails to supply the deficiency of Schnitzer because Derrick neither teaches or suggests use of a particular visual display to alert the user nor does Derrick teach or suggest any alert system nor an electronic controller that gathers information regarding an additional aspect of the respiratory condition of the patient when said visual display alerts the user. Allen also fails to supply the deficiency of Schnitzer and Derrick because Allen does not teach or suggest a visual display that alerts the user of a potential problem nor an electronic controller that gathers information regarding an additional aspect of the respiratory condition of the patient when said visual display alerts the user. Thus, Applicant respectfully submits that Schnitzer, Derrick, and Allen, alone or in combination, fail to teach or suggest all the elements of claim 1.

Claims 2-15 and 32 depend directly or indirectly from claim 1 and are thus distinguishable over the cited references for at least the reasons discussed above. Thus, withdrawal of the rejection of claims 1-15 under 35 U.S.C. § 103(a) is respectfully requested.

**Conclusion**

In view of the foregoing, the Applicant respectfully requests that the Examiner enter the above-noted amendments before the application is examined upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of all currently pending claims and the issuance of a Notice of Allowance are requested.


Applicant has filed this Response without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.

The Examiner is invited to contact Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

Respectfully submitted,

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